

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

BARBARA PETTY

PLAINTIFF

VS.

CIVIL ACTION NO.: 4:15-cv-56-DMB-JMV

HESTIA HOLDINGS, LLC

DEFENDANT

ORDER REQUIRING SECOND AMENDMENT

By Order [15] dated June 30 the Court directed Defendant Hestia Holdings, LLC, to amend its Notice of Removal [1] within five days to correct defective allegations of jurisdiction. The Court has reviewed the Amended Notice of Removal [16] filed by Defendant on July 6 and finds it still wanting to the extent it alleges residency of the parties, including Plaintiff and members of the various LLC's related to Defendant.

As previously stated “[t]he party asserting diversity jurisdiction must ‘distinctly and affirmatively allege[]’ the citizenship of the parties.” *Molina v. Wal-Mart Stores Texas, L.P.*, 535 F. Supp. 2d 805, 807 (W.D. Tex., 2008) (citing *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 919 (5th Cir. 2001)). “For purposes of diversity jurisdiction, the domicile of the parties as opposed to their residence, is the key.” *Combee v. Shell Oil Co.*, 615 F.2d 698, 700 (5th Cir. 1980). Accordingly, because the amended removal petition merely alleges the residences of the various parties, this Court cannot allow the defective pleading to stand. Nevertheless, because it appears from Defendant's allegations of residence of the various parties that complete diversity of citizenship likely exists in this case,¹ the Court will afford Defendant one final opportunity to correct the defects before the Court must consider dismissal of this case. Therefore, within five

¹ See *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954) (“Residence alone is not the equivalent of citizenship, although the place of residence is prima facie the domicile.”).

(5) days of the date of this order, Defendant must file an amended notice of removal asserting the citizenship of the parties.

SO ORDERED this, the 16th day of July, 2015.

/s/Jane M. Virden

UNITED STATES MAGISTRATE JUDGE